



E-Filed on 8/8/07

1 3993 Howard Hughes Parkway, Suite 600
 2 Las Vegas, NV 89169-5996
 3 Facsimile (702) 949-8321
 4 Telephone (702) 949-8320

5 Susan M. Freeman AZ State Bar No. 004199
 6 Email: sfreeman@lrlaw.com
 7 Rob Charles NV State Bar No. 006593
 8 Email: rcharles@lrlaw.com

9 Attorneys for USACM Liquidating Trust

10 STUTMAN, TREISTER & GLATT, P.C.
 11 FRANK A. MEROLA
 12 (CA State Bar No. 136934)
 13 EVE H. KARASIK
 14 (CA State Bar No. 155356)
 15 CHRISTINE M. PAJAK
 16 (CA State Bar No. 217173), Members of
 17 1901 Avenue of the Stars, 12th Floor
 18 Los Angeles, California 90067
 19 Telephone: (310) 228-5600
 20 Facsimile: (310) 228-5788
 21 Email: fmerola@stutman.com
 ekarasik@stutman.com
 cpajak@stutman.com

22 Counsel for the Official Committee Of
 23 Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

24 SHEA & CARLYON, LTD.
 25 JAMES PATRICK SHEA
 26 (Nevada State Bar No. 000405)
 27 CANDACE C. CARLYON
 28 (Nevada State Bar No. 002666)
 29 SHLOMO S. SHERMAN
 30 (Nevada State Bar No. 009688)
 31 701 Bridger, Suite 850
 32 Las Vegas, Nevada 89101
 33 Telephone: (702) 471-7432
 34 Facsimile: (702) 471-7435
 35 Email: jshea@sheacarlyon.com
 ccarlyon@sheacarlyon.com
 ssherman@sheacarlyon.com

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

16 In re:

17 USA COMMERCIAL MORTGAGE COMPANY,
 18 USA CAPITAL REALTY ADVISORS, LLC,
 19 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 20 LLC,
 21 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 22 USA SECURITIES, LLC,

Debtors.

23 **Affects:**

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Case No. BK-S-06-10725-LBR
 Case No. BK-S-06-10726-LBR
 Case No. BK-S-06-10727-LBR
 Case No. BK-S-06-10728-LBR
 Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

Objection of USACM Trust To Mary McKennon Claim Filed in Wrong Debtor's Case; Objection of FTDF to Proposed Allowance of Claim

Hearing Date: October 15, 2007
 Hearing Time: 9:30 a.m.

1 Mary McKennon filed Proof of Claim No. 10725-00967 against USA Commercial
 2 Mortgage Company in the amount of \$50,000.00. Ms. McKennon also filed a proof of
 3 interest in the amount of \$50,000 in the USA Capital First Trust Deed Fund, LLC
 4 ("FTDF") case (the "Proof of Interest"). The USACM Liquidating Trust (the "USACM
 5 Trust") hereby objects to Ms. McKennon's claim. The basis for the claim is shown on its
 6 face and in the attachment as an investment in FTDF. Accordingly, it is a claim that was
 7 incorrectly filed in the USA Commercial Mortgage Company ("USACM") case. The
 8 USACM Trust respectfully requests that this claim be disallowed as a claim against
 9 USACM. Any claim held by Ms. McKennon against USACM solely on account of her
 10 investment in FTDF is derivative of FTDF's claims against USACM. Under a settlement
 11 approved by the Court on June 12, 2007, all such FTDF claims were settled, with FTDF
 12 holding a \$7.0 million allowed general unsecured claim and beneficial interest in the
 13 USACM Liquidating Trust. The equity interest holders in FTDF will share in any
 14 recovery on account of that claim.

15 The Official Committee of Equity Security Holders of FTDF ("FTDF Committee")
 16 further objects to allowance of Ms. McKennon's claim as a claim against the FTDF estate.

17 Bankruptcy Code section 502 authorizes a party in interest to object to claims. See
 18 11 U.S.C. § 502(a). Upon such objection, this Court, "after notice and a hearing, shall
 19 determine the amount of such claim in lawful currency of the United States as of the date
 20 of the filing of the petition . . ." 11 U.S.C. § 502(b). Although a proper proof of claim is
 21 presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the
 22 presumption, the creditor has the ultimate burden of persuasion as to the validity and
 23 amount of the claim. Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer
 24 Mortg.), 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996)
 25 (quoting In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

1 The FTDF Committee has analyzed the McKennon claim and has determined that it
2 has been incorrectly designated as a "proof of claim." Indeed, Ms. McKennon filed the
3 Proof of Interest in the FTDF case. Pursuant to Bankruptcy Code section 502, a "creditor .
4 . . may file a proof of claim." An equity security interest holder, however, must file a
5 proof of interest. See 11 U.S.C. § 501(a). Bankruptcy Code section 101(16) defines
6 "equity security" to include a "share in a corporation, whether or not transferable or
7 denominated 'stock', or *similar security*" or a "warrant or right . . . to purchase, sell, or
8 subscribe to a share, security, or interest" of a share in a corporation. 11 U.S.C. § 101(16)
9 (emphasis added). See also Nev. Rev. Stat. §86.521 (upon dissolution of a limited liability
10 company, a limited liability company must pay liabilities to creditors before paying
11 liabilities in respect of profits and/or capital to members of the limited liability company).
12

13 The McKennon claim clearly reflects that it is based on its membership in the
14 FTDF and not based on any debt the claimants hold against the FTDF. For example,
15 annexed to the McKennon claim are account statements that list the number of shares Ms.
16 McKennon holds in the FTDF, the price of such shares, and the FTDF Member's account
17 identification number. Membership interests and/or shares in the FTDF clearly fall within
18 the definition of "equity security" under Bankruptcy Code section 101(16). Thus, the
19 holders of the equity interests are equity security interest holders of the FTDF and do not
20 hold unsecured claims against the FTDF estate. Indeed, Ms. McKennon filed the Proof of
21 Interest in the FTDF case.

22 This objection does not seek to prejudice the rights of Ms. McKennon as an FTDF
23 member to recover from the FTDF estate on account of her membership interest of
24 \$50,000, which is the amount asserted in the McKennon claim and in the Proof of Interest.
25 Ms. McKennon shall retain her interest in FTDF in the amount of \$50,000 as reflected in
26 the Proof of Interest and the books and records of FTDF. Indeed, Ms. McKennon has
received distributions based on this FTDF membership interest to date, with no objection.



1 Accordingly, the USACM Trust and the FTDF Committee seek entry of an order that will
 2 disallow the McKennon claim against USACM, disallow any proposed allowance of the
 3 McKennon claim in the FTDF case, and appropriately allow Ms. McKennon to retain her
 4 equity interest in the FTDF in the amount of \$50,000 as reflected in the Proof of Interest
 5 and the books and records of FTDF as of the bankruptcy petition filing date.

6 This objection is made pursuant to Bankruptcy Code section 502, Federal Rule of
 7 Bankruptcy Procedure 3007, and Local Rule of Bankruptcy Practice 3007.

8 Dated: August 8, 2007.
 9

10 By: /s/ Eve H. Karasik
 11 FRANK A. MEROLA (CA State Bar
 No. 136934),
 12 EVE H. KARASIK (CA State Bar
 No. 155356), and
 13 CHRISTINE M. PAJAK (CA State Bar
 No. 217173), Members of
 14 STUTMAN, TREISTER & GLATT, P.C.
 15 1901 Avenue of the Stars, 12th Floor
 Los Angeles, CA 90067
 16 Telephone: (310) 228-5600

17 and

18 CANDACE C. CARLYON
 19 Shea & Carlyon, Ltd.
 20 701 Bridger, Suite 850
 Las Vegas, NV 89101
 21 Telephone: (702) 471-7432
 22 COUNSEL FOR THE
 23 OFFICIAL COMMITTEE OF EQUITY
 SECURITY HOLDERS
 24 OF USA CAPITAL FIRST TRUST DEED
 FUND, LLC

10 By: /s/ Rob Charles (#006593)
 11 SUSAN M. FREEMAN
 ROB CHARLES
 12 LEWIS AND ROCA LLP
 13 3993 Howard Hughes Parkway, Suite 600
 Las Vegas, NV 89169-0961
 14 Facsimile (702) 949-8321
 Telephone (702) 949-8320
 15 COUNSEL FOR USACM Liquidating
 Trust



1 Copy of the foregoing
2 Mailed this 8th day of
3 August, 2007 to:

4 Mary McKennon
5 303 Esplanade
6 Newport Beach, CA 92660

7 By /s/ Renee L. Creswell

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